

SMALL BUSINESS ADMINISTRATION

Omaha, NE RegFair Hearing

April 15, 2008

PROCEEDINGS

[START TAPE Omaha, NEHearing]

AUTOMATED VOICE: A reported joined.

MR. NICHOLAS OWENS: But Regional Administrator Jones, it's terrific to be with Leon and the others here with the district office, Barbara thank you so much for all the work and putting together this forum. We hold these forums throughout the country. It's important to get outside the beltway that we often hear a lot about in Washington to listen and understand the concerns of small business. But before we get started, we have a distinguished gentleman here who served and was appointed as The Regional Regulatory Fairness Board. They are your local regional eyes and ears and the pulp of the business community of concerns about regulatory enforcement fairness. So with that, first I'd like to introduce the chairman, Mr. Thomas Schlafly, also with us to his left is Joe Belserody [phonetic] and then Scott Perkins and Mr. Chairman, make comments.

MR. THOMAS CHLAFLY: By way of background I am—I'm a lawyer and I started a small business. I practiced law in St. Louis and in 1991 I founded the second largest brewery in St. Louis and I made 120 million barrels a year. And I guess what gave me perspective is every lawyer needs to be a client sometimes. We all know with small business –

AUTOMATED VOICE: [Interposing] Carol joined.

MR. SCHLAFLY: -loan documentation is, "Okay go ahead and sign it." But it's your signature on the guarantee; it's a very different feeling. And when I was approached about serving on the board I thought this is wonderful resource both for my clients at the law firm and as a small business owner myself. We've all felt overwhelmed at times and to know that there's a place where our voice can be heard is something I can not recommend highly enough. Thank you all for your participation.

MR SCOTT PERKINS: I'm a small business owner. I have had a computer consulting and sales firm for 25 years now. And served as chairman for NFI - - National Federation for three years and came across quite a few - - called - - having difficulty with federal or state issues some time or another - -. I couldn't wait to get involved and hopefully and help out small business owners. Now for instance - - . I'm a partner in a small firm and we do a lot of federal contracts - - professional service of mine contract signing - - serving on the board but I think my knowledge and professional service - - federal government - - small business regulatory - -

MR. OWENS: Now that is great. It is great work for these

gentlemen. Well as the Regional Administrator mentioned we held a hearing in Kansas just a few weeks ago, thank you. And then we will be - - in a couple of days - - I guess but -

MALE VOICE: - -.

MR. OWENS: Yeah there's six in the - - while I'll be in Wallington later this week, break in the schedule and then 6th of May we'll be in Missouri - - Los Angeles. Was this planned by you?

MALE VOICE: That was.

MR. OWENS: - - okay well that's lovely. Well anyway thank you again for your time. I know for each of you the organizations represent, the agencies represent and your businesses—time is a precious commodity, we appreciate you're the senator being represented here today. Other congressional representation, I know that Senator Hegel's office represented.

CONGRESSMAN LEE PERIZONE: Congressman Lee Perizone.

MR. OWENS: Terrific, thank you for being here sir. And we have federal agencies represented I certainly wanted to acknowledge. I know here is the good gentleman from Washington with The Department of Labor if we could recognize our federal partners here.

MALE VOICE: - -.

MR. OWENS: Yeah please.

MR. THOMAS HICKS: Good morning, my name is Thomas Hicks. I'm from the U.S. Department of Labor in Washington. I'm in an office involved in these programs. My office is responsible—actually we're a trouble shooter for small business owners that have problems with The Department of Labor Rules and Regulations. My office has received comments from - - problems with the Department of Labor and you file a comment. - - to come to my office - -. Federal agencies, we have - - information and my main responsibility - - just to hear small business owners concerns - - Department of Labor issues and, you know, deal with those. Thank you.

CRYSTAL: My name is Crystal - -. I'm with the U.S. Department - - office here in Omaha. My office is - - contract law throughout this area - - and we try - - and we also try to provide assistance - - and - - so - - questions if you like.

MR. OWENS: Thank you - - yeah please ma'am.

MS. MARY HICKEY: Good morning, my name is Mary Hickey I'm a local Taxpayer Advocate. My responsibility is - - we assist both individual and business taxpayers with particular safety issues they may have, something that they may be working on, - - IRS - - channels or when they experience some type of economic burden or hardship - -

action by the IRS - - so we here are—I'm also here to listen and hear - - that we can help with. We will certainly be glad to.

MR. OWENS: Stand by the post office - - .

MS. HICKEY: - - .

MR. OWENS: Well it's flashed all over the newspaper, Omaha's post-office might be open late so - - .

MS. HICKEY: - - .

MR. OWENS: - - . Yep, anyone else here from a federal agency?

MS. BETTY HAYMAN: I'm Betty Hayman from - - relationship with small business - - .

MR. OWENS: Terrific, thank you. This good gentleman here was telling me that I look like I was a full back with the Greenbay Packers or something. And I was thinking about a former district director. I say former, he's not a former, probably after this comment he should be a former, no. I was at an event and he said we're having this roundtable and after seeing Nick I think I might call a roundtable. I told him it's not part of the gentleman's society anymore- - . But anyway it is great to be in Nebraska. This is my first time - - to be here. So if you take a look at the state, 161,000 small businesses representing over 97% of the business in the state are small businesses. And as I survey the currently entrepreneurial small business climate I can truly say there's never been a more exciting time to be a part of America's small business because across our country and of the state of Nebraska.

America is after all a country of entrepreneurs. It was built by entrepreneurs and over the years it's grown and succeeded because of the work; folks having a dream, a vision and pursuing that dream with bigger determination. Owning and working for a small business is part of the fabric of our local community. If you look at over the last three decades, Fortune 100, excuse me Fortune 500 companies have declined in employees while small businesses have increased. We're looking at 60% to 80% of jobs are now created by small businesses and that's particularly impressive when you consider that 8.3 million small businesses, excuse 8.3 million new jobs have been created in our country since August 2003 and it's particularly important when we enter a year where there is job creation is slowing.

Many of our corporate icons, you recognize many of the names; Callaway Golf, I was just in Florida the other day they certainly recognized it where I was, Outback Steakhouse, Federal Express, Sun Microsystems, Jenny Craig, Apple, all started with the assistance of the SBA. And we often don't think about that but these are businesses that once were starting out as entrepreneurs. And in fact, three-quarters of

the Fortune 100 companies were not even listed 25 years ago. So that's the story of business incarnation and growth that has defined the last half of our century and our economic history.

Take a look at the economy, we often hear key words, small business is the economic engine of our country, it's the driver of our economy. But if we employ, small businesses employ half of the private sector workforce; account for half of the non-farm GDP. And our major drivers have been of innovation which producing and generating 13 times as many patents per employee than larger competitors and account for 30% of the exporters in our country. In addition, small business formation and growth could change the game from millions living in under served areas in rural communities. It is important that as we develop and focus attention to rural areas of our country and to underserved areas so we can bring jobs, investment and wealth creation. Small business ownership can be the gateway for a lot of opportunities and opportunities for all Americans. President Bush said just last week that small business ownership is a great equalizer in America. The only connections you need are happy customers and a good business plan. And the only credentials you need are a good product and the only values you need are willing to take risks and work hard.

There are small business owners of this great state who worked hard and have succeeded. And at SBA it is a privilege and I know the Regional Administrator Leon and others at our table will share in this belief. It is a privilege to be—opportunity to work as a change agent and to help people succeed and provide them with the programs and services that we have through the SBA. To enable ownership—entrepreneurship, SBA is has a number of valuable products. Currently we guarantee loans. Some may think that its grants or direct loans but we guarantee bank credit union thrift loans. Over \$75 billion of loans are guaranteed in the private sector by the SBA. We work with federal agencies to make sure that small business in fact receive small business contracts and can grow through revenue with federal contracts, representing over \$80 billion in contracts. We help small businesses get counseling be it through SBDCs, entrepreneurial development, women's business centers and that's over \$1 million counseling and technical assistance providing in the past year.

Not only does SBA play a critical role and overall with small business, but more than a third of our loans go to underserved geographic markets and our loan dollars are four to five times more likely to provide women-owned start up business and minority businesses with the capital that they may need. But no matter how effective the SBA's products and services may be they should never take the place of sound, fundamental policies in our economy and in our business community. They can help create some folks to take risks, invest in their business, to grow and flourish and to create more wealth

in the local communities. A lot of issues have been on the minds of small businesses. I've looked at - - regulation, I like the spirit you were talking about earlier about the gentleman who introduced you to SBREFA and I actually find SBREFA and regulatory fairness exciting. A lot of folks don't find regulations exciting but when we can seek fairness, we do. That's the issue I focus, but there's a lot of concerns on the minds of small business owners today. Our economy, export/import issues for certain communities in our country and I just want to share a few comments there.

First we must encourage investment by keeping taxes low. The President's tax cuts have provided important capital to small businesses to support economic expansion, job creation and innovation. Second, we must reduce—we need to reduce burdensome regulations. Small firms pay 45% more per employee than a larger company on federal regulation. So these hidden burdens can suck the oxygen out of a small, thinly staffed, thinly staffed small business. And third, we need to help small businesses address the cost of healthcare which is one of the most critical issues affecting, facing small businesses today. 70% of the uninsured are small businesses, are employed by a small business or self-insured, 70%. It's an issue cost. Increasingly small business determined they can't afford to provide the health coverage.

Another issue that's important for small business is helping them operate in a global economy. Exporting offers a tremendous growth opportunity for small businesses which account for let's say 30% of exports and many of these existing trade arrangements provide much favorable terms for foreign companies that import to the U.S. but not necessarily for American companies, small businesses wanting to export. - - agreements, South Korea, Columbia, Panama are all designed to level the playing fields for tariffs and to benefit certain areas that are concerns of small business. Intellectual property rights, removing burdensome paperwork, administrative procedures and such. So these are areas that we're all focused and working with Congress on.

Just this month represents my two years as the National Ombudsman. It is the longest title in the agency. National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness. All that means is trouble shooter. And so I've traveled the country trying to shoot trouble. But I would tell you it's extremely rewarding work whenever I meet with small business owners across this country, I hear them express—when they're back's against the wall and there's nothing they can do, no where they can go. It is rewarding work. But I'll tell you that the DNA—entrepreneurship is part of our national DNA but you want a fair level playing field to succeed. I've never met a small business owner, and I know we're friends but SBDC is another who counsel these people, have never met a small business owner who sought to fail. You want to succeed. But it's important that government provide and facilitate that opportunity to succeed.

The state of America's is 26.5 million small business is fundamentally strong, representing 99.7% of all businesses in our country and it's because of the work of small business, we're looking at that percentage of 60 to 80% of the new jobs is created by small businesses; that we are realizing growth but it's because of small business we're realizing growth in our economy. Overall, it's clearly slow, just today and of course its part of the April 15th tax day, the economic stimulus will take effect and will provide an opportunity for small business owners. A lot of them know about the \$600 to \$1,200 but there's some wins for small business in this economic stimulus and that relates to 1; it's going to stimulate short-term spending, there's also a 50% bonus deduction for small businesses who seek to purchase new equipment this year. We encourage them to purchase new equipment, software, tangible property this year; this is a temporary tax opportunity. And also if you spent up to \$800,000 in new purchases, it will provide a \$250,000 deduction compared to \$128,000; so essentially doubling that.

Small businesses have an opportunity with—in today's economy. There's a concern that—one community I was in recently says that the economy is strong. There's not a credit crunch. In another community, they may find a credit crunch. SBA has an important role to play today when it relates to the economy and credit. SBA guarantees these loans that sometimes they're called for the tightening of credit for certain financial institutions, they need to call on that SBA guarantee for the full faith and credit of the government. So SBA has an opportunity to help small businesses that need a longer payback period and other unconventional structures that may not meet certain financial institutions requirements.

So with that as we talk about success and - - we all also know small business is faced with other challenges as we mentioned; regulatory and compliance challenges. The ingenuity of a small business owner did not come to Washington, D.C., did not come to the federal government and often whenever I say we're here from the government and we're here to help it makes folks want to run out the door. You just made a comment as far as running out the door. But truthfully it's what we're here to do and we're here to listen and ultimately listen to your concerns and try to help you resolve them. President Bush had said many times that the role of government is not to create wealth, the role of government is to create an environment where the entrepreneurial spirit can flourish, you can risk capital, you can achieve the American dream.

So the environment we sometimes find in the federal government's we got you attitude is the area of concern that I often walk into my office and face cases where small business is concerned making sure that regulations are effective and not excessive. An example of misuse that come to my attention and to our regional

regulatory fairness board are concerns about unfair excessive acts of enforcement. That could be repetitive audits, investigations, burdensome onsite clients, retaliation. It's important to be able to tell your government both the good and the bad as it relates to an employee of the federal government. Ultimately our job at the National - - Development is to help small business owners keep more of their hard-earned money in their pocket to decide what to do with it. Small businesses—there was recent economic report that our office has saved upward of \$250 million in burdensome and unnecessary regulatory enforcement issues. That's meaningful hard dollars; regardless if it's \$1,000 or \$50,000 these are hard numbers for small businesses that truly can affect them from being a going concern to not being a going concern. As we mentioned the cost of regulations for small business; \$7,647 per year per employee. That's what it costs a small business to comply with federal regulations.

Let's say employees, of 20 employees or less compared to our larger company of 500 employees or more. 67% more just to comply with tax regulations. Four and a half times to comply with environmental regulations and it's often because they can't employ teams of accounts and super consultants to represent their issues. And the money small businesses spend on unnecessary regulations and unfair enforcement could be better spent on providing health coverage for their employees, expanding the infrastructure for their business and growing their local economy. Issues that may come from this forum today through the Internet to our office or through the mail, what we do—we seek high-level, third party review. So if you have a concern regarding the EPA, Department of Labor, OSHA, Nuclear Regulatory Commission, Department of Commerce, any federal agency, we seek a high-level review. So that issue is not going directly back to that person that's issued a citation or enforcement action. But we seek the fairness of that concern to make sure that your issues were addressed in a timely and fair manner.

We also assist small government entities of population 50,000 and below, yes and non-profit organizations. So with that, when we can not assist small businesses with enforcement related issues we work with our Office of Advocacy regarding proposed rules. The state recognized the economic burden on small businesses and addressed those concerns. For a little history we appreciate Congress and the great work that we have with our House and Senate Small Business Committees. We work closely with the Congressional Delegation on issues or concerns of the small business community here. SBREFA, our office and our board was created by Congress. We hold about 20 to 30 roundtables and hearings every year. It's important for us to get out of D.C. to understand the concerns and to seek out the concerns that are affecting small business.

Speaking of Congress, we have accountability to the United

States Congress. Every year I issue a report to Congress rating federal agencies, A to F on their responsiveness to small business concerns. It may be an issue of compliance assistance. Small businesses wanting to comply by the rules but they also want to have fairness in plain language to tell you how to comply by that rule or that regulation. So we seek out compliance of systems, resources and federal agencies and rate them on that. Timeliness, quality of response, do they truly address your concerns or do you receive a form letter from that federal agency and non-retaliation policies are also rated. Of all the successes we've had and we've had a lot of success stories, we never guarantee 100% positive resolution but we do guarantee 100% of our efforts to work on behalf of small business cases. Just a few examples to give you an idea. In Illinois, there was a small brew pub that alleged—rather the Department of Labor's wage and hour division said that Brew Master should be hourly and not salary. That was a business decision for that local business with that employee. That small business owner spent over \$7,000; facing more legal fees before they contacted our office. We were able to help an equitable settlement. I've had numerous cases, customs and export/import for folks that spent thousands of dollars and did not know they could contact our office.

So 1; our job is to help get out there, understand the concerns of small business but also to do outreach. We can not assist small businesses if they don't know about us. So I appreciate those of you representing the associations and organizations for being here today. Another case was that the USDA in Seattle, Washington. There were three grocers that testified that the USDA Food and Nutrition Division had disqualified the Food Stamp Program alleging fraud. Well the small business owner said they did not commit fraud and for that local community the sustenance, this program is necessary for these folks. They worked with our office and it was determined that USDA had in fact made a mistake and that was an inadvertent error by the agency. It may not be a specific enforcement action. You may have had a contract. My statutory - - view is statutory regulatory enforcement but I don't tell anyone no that we can't help you. If you need a phone call returned from an agency—for those of us working in federal government we know enough about trying to navigate bureaucracy of voicemail. But it can be meaningful when you have a contract and other issues of a concern to you, we want to be helpful. So with that, I want to take this opportunity to turn it over to the chairman and we can begin this forum. Thank you all for taking the time, we look forward to your testimony. Mr. Chairman.

MR. SCHLAFLY: Thank you very much. I have not kept the agenda from you. We have first - - .

FEMALE VOICE: Okay we have Frank Smith - - Heating and Cooling Association - - .

MR. FRANK SMITH: - - do that from here?

MR. SCHLAFLY: Sir if you will - - come up here - - recording process - - transcribed - - .

MR. SMITH: Up here or what?

MR. SCHLAFLY: Yes sir, that would be fine thanks.

MR. SMITH: My name is Frank Smith. I'm the President of the Heating and Cooling Contractors Association. We're a local association in Omaha and have about 70 members. Our members probably do about 75% of the business in the surrounding areas. The heating and cooling contracting industry is one of the largest and - - probably one of the most frightening. We have 184 licensed contractors here in Omaha, mostly small. We have almost zero influence on the national level as far as - -. The same is true on the state level, it's too frightening. Over the past few years we've taken a pretty rough beating from federal regulations all the way from the type of gas that you have to use in air conditioning equipment to efficiencies of equipment and all the different types of regulations of installation, it goes on and on.

The most recent one that I'd like to bring to your attention today is a law that was introduced into Congress but really I must apologize, I don't know the status of it. But it was a law that would allow local jurisdictions and states to set their own energy efficiency standards rather than the national - - standards. This affects two large groups. First of all the wholesalers, I think I turned in - - soon be able to get those - - all that. Typically like a wholesaler in Omaha [noise] - - and the air conditioning season is approaching like this - - manufacturers - - . Well, that's hard enough but if you also have to make preseason orders there are maybe 10, 11, 12 different types of efficiency requirements, different states - - have set up managing - - probably end up with too many at one time - -. So our stand is if you're going to have energy efficiency standards - - I think this was brought up by a couple of cities down in Arizona and New Mexico, they wanted to increase the air conditioning efficiency - -. So it makes it very difficult for the contractor also. Our biggest competitor in the H&AC business - - guys that are unlicensed - - they're not going to pay any attention to this energy efficiency - -. This latest energy efficiency introduction. But the increase in the costs of equipment are about \$500 to \$800 per unit. The last go around was similar so - - at about \$2,000 - - equipment costs alone - - costs. If you have - - answer any questions - - .

MR. SCHLAFLY: I'd like you to clarify your position. You're talking about a proposed federal statute as opposed to regulation. This is a bill that's somewhere in Congress -

MR. SMITH: [Interposing] Yes.

MR. SCHLAFLY: - that would give municipalities, state and - -

leeway to set their own standards? - - question.

MALE VOICE: - - state level?

MR. SMITH: It varies, Iowa has a state license, Nebraska - -.

MALE VOICE: And who does the enforcement - - that are practicing without appropriate licensure? Who has that enforcement?

MR. SMITH: Unfortunately, for example, here in Omaha it would be the City Permits and Inspection Department. We've turned in probably maybe 200 claims and none of them have been followed. That is the City Legal Department - - we don't have our - -.

MALE VOICE: Unregistered - -.

MR. SMITH: Yeah.

MALE VOICE: - -.

MR. SMITH: Well every time they pass a law, they can enforce it with the unlicensed guy, the unlicensed guy - - this latest proposal would...

MALE VOICE: - - I will follow-up with The Office of Advocacy - -. Thank you. Ms. - -.

FEMALE VOICE: Yes.

MALE VOICE: - -.

FEMALE VOICE: Tommy Garrett.

MR. TOMMY GARRETT: Good morning.

MALE VOICE: Good morning.

MR. GARRETT: I appreciate the opportunity. I'm Tommy Garrett with the Garrett Group for - - . I just have some general complaints. We're primarily, we do intelligence and security work for mostly retired military and former intelligence security professionals, other guys who have that kind of experience. Obviously we do A and AS type work - - services - - and our big problem quite honestly is IDIQ contracts. Indefinite delivery, indefinite quantity type contracts which the government is increasingly - - our primary customer obviously is the federal government and this particular case out at STRATCOM - - headquarters, U.S. STRATCOM and quite honestly we don't have the opportunities to compete for work. That's our biggest complaint is they keep—if we could be allowed on the playing field, we can beat the big guys, the big corp. the big companies toe to toe.

I tell people we don't make satellites, airplanes, ships, tanks; that kind of thing. It's a subject matter expertise. If we can play on a level playing field we can beat the big guy and we can save some money. The fact of the matter I, management can't get on the playing field. IDIQ contracts - - one of the few companies and - - federal

recognition - - doesn't hold out - - small companies - - compete on IDIQ contracts. There's a - - by STRATCOM called - - it's got six - - FDIC and a medium sized company called SES. So if you're a small business you're going to compete for any work at U.S. STRATCOM who by the way all of the A and AS work at STRATCOM is supposed to go on that contact list. So if you're going to compete, you have to - - one of those things it covers. Which brings another problem in that—and we have some first hand experience with this. Once the big company has got you as a team-mate and then they actually throw you a bone - - but then they take away your advantage by putting an exorbitant cap - - . It's—we experienced something like that last fall where on a particular contract this particular company put a \$340,000 - - on our price and we ended up losing - - price that kind of thing - - unconscionable. But so the great frustration for the small business is that we can go after—we can save the government money but we're not allowed to compete. What we have to do is be - - the big companies.

I guess you could probably make an argument would be to allow us—allow there - - on IDIQ contracts. Either that or regulate how the big primes treat their subs. Another frustration is they're - - contract vehicle and last May, the first month that we had started our business, I went to the industry meeting and at the industry - - up to two small business - -. So we thought hallelujah this is an opportunity for us to compete. So we had - - we had great strategy for priming on this particular contract and we approached a lot of big companies that were not part of the - - that were very interested in coming with us because of our unique approach and there were some rumors out on the street that there were in fact not going to be any - - primes and I don't want to speculate where those rumors came from but a lot of those companies that—we needed to have team-mates to win and some of these companies who are large Fortune 500 companies that would - - team - - they themselves did not want to prime but they were willing to sub to us but they wanted to wait until they start doing the acquisition strategy that the Department of Defense was going to come and help with that would verify that in fact there were going to be small business - -.

We never saw an acquisition strategy come out of the DOD. So ultimately you know we got painted in a corner and we had to give up on our opportunity to chase this contract - - and ultimately - - with one of these companies, so. Lots of frustration there from a contractual point of view - - federal acquisition - -. It's great to say that you know you're - - but if you're going increasingly into - - contracts - - contracts - - then what's the use of. Also another frustration is this - - contract which was created for all the A and AS work at headquarters STRATCOM, the customer will turn around and they'll go on a different contractor normally after they - - one of the big contractors, they'll still be in there and they'll say “Hey take this work, take this

contact put it over on another contact vehicle it's not - - it's not - - it's because that big company is a prime on this other contact vehicle so they try to circumvent the whole reason they created this IDIQ contract - -.

And a lot of times they do it to avoid competition - - and then they sole source it to big companies and that's another frustration for us and... It's interesting I talked to the - - contact - - cash is the life flow to small business. Everybody knows it. - - contacting squadron said you're absolutely right he said okay do we get 15 billing once we get a contract instead of the normal 30 day billing. They said absolutely. Well we won our first contract last month, a fairly nice contract and since we had to go through the prime, we asked them about the 15 day billing they said they talked to the - - squadron they've got - - contacting squadron said sure - - 15 day billing but we want a discount on it. You know and so here it is again, it just, you know it gets you time and time again.

Almost the worst thing that happened, almost a catastrophe for us is we won this big contract last month, about a \$1.4 million contract. So now you have to meet payroll, so you go out to get an SBA guaranteed loan you know, The Patriot Express loan and that's a great and wonderful thing but it's almost like it's window dressing because quite honestly the SBA will back the loan but the bank really doesn't care, they still put you through the requirements of you know of having property that they could put a lien on, you know we've got - - that fortunately for us there's a - - in - - seen this happen before. He essentially - - co-signed the loan for us and that was two days before we were supposed to push payroll so. That's really frustrating. It seems like—I asked the banker I said what's the purpose of the SBA guarantee when in fact it just didn't seem to matter? You still needed to meet all of their requirements. They really don't understand the whole federal contracting process, the whole accounts receivable. Once we bill the government for X amount of work, that's an accounts receivable and banks don't - - don't understand that. You know they want property to put liens on, they want equipment, that kind of thing so. That was a little frustration too so.

Talked about the - - fees, you know there have been opportunities that have come - - will have a two day turn around. On source - - that's what they use to determine whether there should be - - work or not. And when there's a two day turn around that's given the opportunity to respond you wondering how to, how - - set aside contracts - - sole source. And he mentioned briefly, oh here's another good one. The security department, we're in - - security - - business where you have to have TSS security clearances, etc., etc., before we could get a federal contract we needed to have a top secret facility clearance. Before we could get a top secret facility clearance, we needed an - -. We go get a - - contract. So why can't - - check - - and

that whole process that—fortunately for us we got a real sharp security guy that - - we got our TS facility clearance through. That was a great frustration. There was a lot of obstacles - - and like you say the health insurance part. We felt it very important to provide our people with health insurance coverage and as a small business, it's a killer. It's an absolute killer. You don't get those advantages of the big companies. I guess that all - - any question for me or?

MR. SCHLAFLY: Can you explain the - - again. I - - me. I got kind of lost in the acronym.

MR. GARRETT: The—yeah I'm going to speak very frankly. It's a cash cow. It's a cash cow for the big companies. You know there's some normal costs to administer a contract. And the team-mate for one of the big companies is we have the expertise and that big company, the big prime which we need to actually bid for work, they put a - - and yet there's - - with us you know think would make sure you would contact this that and the other thing but when they go above and beyond that...

MR. SCHLAFLY: So this is something the big company charges you as the small prime -

MR. GARRETT: [Interposing] Right.

MR. SCHLAFLY: They say there are additional administrative costs associated and those -

MALE VOICE: [Interposing] - - charge you or they charge the government?

MR. GARRETT: Well for example, this particular contract that we bid on, on STRATCOM, the big company said hey we don't have any expertise - - chase this, do you want to chase it? We said absolutely. So we did all the work, we looked at - - we did all the recruiting -

MALE VOICE: [Interposing] Right.

MR. GARRETT: And priced the contract to win. We submit that to the prime because only the prime could submit the contract to the government. They put their - - on -

MALE VOICE: - - contract administration.

MR. GARRETT: Right and in this particular case it was a \$340,000 - - fee on a two year contract.

MALE VOICE: What percentage of contracts - -?

MR. GARRETT: It worked out to somewhere between 15% and 20%.

MALE VOICE: - -.

MR. GARRETT: That's pretty exorbitant. But when this

happened, that particular company apologized profusely when we lost. They publish the winning company's price. Our - - that we have submitted to our prime was \$290,582 cheaper than them. So had that prime been a little bit more reasonable with their - -. We subsequently on the - - that's - - for us, they wanted us to be on their team, we negotiated single digit - - fee on - - for us but okay that shows you small business.

MALE VOICE: Do you know what - -?

MR. GARRETT: - - 5416, that's our prime - -.

MALE VOICE: I got a question, the IDIQ, is the reason why you can't get in that directly because they won't tell you how many of - - I mean?

MR. GARRETT: No, I can understand what's going on. When they do a full and open competition on a contract and I've heard about this - - headquarters, U.S. headquarters, they had 90 some-odd proposals that were submitted. And so I can understand why the government wants to go to IDIU long-term contracts like that but you know - - because you have to wade through 90 proposals - -. So I can understand why they want the IDIQ contracts but again as a small business starting out, we didn't even have access to the - - market unless we go - - and there are still -

AUTOMATED VOICE: Carol left.

MR. GARRETT: - - throw you a bone or a table scrap, you're lucky.

MR. SCHLAFLY: All of them are contracting - - IDIQ contracts.

MR. GARRETT: You know what in - - the correct existing contract there was a goal I think of 15% but there was no enforcement. I was formerly with one of those big defense contractors and so - - there was no enforcement, there's no measurement of how they're doing that. They're essentially relying on their reporting this and if they don't meet their goals, so what.

MR. SCHLAFLY: So the small business participation wasn't one of the evaluation criteria or - - criteria?

MR. GARRETT: No, as a matter of fact that was part of it when we were—when we thought we were going to compete for prime - - on this - - that was one of the points that we hated is that the—we're actually going to allow our partners to have a larger share of—we wanted to find companies that had particular expertise for each one of those - - categories contracting so - - and they were going to “own that piece” of the contract.

MALE VOICE: - -.

MR. GARRETT: Right.

MALE VOICE: - -.

MR. GARRETT: The - - gotten 22% small business participation and they say they're going to do - - meet their small business goals they will liquidate - - but I don't know - -.

MALE VOICE: How do they measure that, how do they enforce it?

MALE VOICE: Is the contract advertised under - -.

MR. GARRETT: That was - - what they said was going to be the primary - - small business. And it just -

MALE VOICE: [Interposing] - - small business - - is - -?

MR. GARRETT: Yeah, 6.5%. I know I probably bombarded you with a lot, it's really frustrating -

MALE VOICE: [Interposing] Could you explain - - contract - -

MR. GARRETT: Right.

MALE VOICE: We're under a different - - so - -

MR. GARRETT: [Interposing] Right.

MALE VOICE: - and happening - - under professional services - - environment I'm engaged in - - what you described, I'm - - I'm doing this for 25 years the - - of small business - - but - - with - -

MR. GARRETT: [Interposing] Right.

MALE VOICE: - - friend you probably - -.

MR. GARRETT: Well indeed and you know at that time - - worked out there - - military and that's how we finally got some of the big—again - - vehicle was created specifically for all AS work at STRATCOM. But some of the big companies will come in and get and - - hey put it over on this contact vehicle that they had access too - - small companies - - access too so we don't - - that's frustrating - -.

MALE VOICE: In my experience, in contacting officer has to give evaluation of - - small business registered with DCR.

MR. GARRETT: Right.

MALE VOICE: Right. Although they'll do their - - DCR is not a hand - - number of small business registered that are professional, that can give them the best - - to not use a small business - -.

MR. GARRETT: But see we can't even get there because again - - contact - - was provided for all A and AS work at headquarters STRATCOM, all A and AS work so they can't even look at - - contract. There are a number of us small businesses - - all the other business owners but they can't even just set aside work because all - - AS kind

of work - - so - - big company takes. So we don't even have the opportunity. And that's with just a—the base - - of the whole frustration but we can't even compete, we have to go through - - company because the IDIQ requirements.

MALE VOICE: - - you're familiar with contract - - they're - - two dimensional - - contract - - too many things become - - rather than traditional protection of small businesses - -

MR. GARRETT: We - - small business - - you know all A and AS work has to go in as a contract.

MR. SCHLAFLY: Mr. Garrett thank you for your time.

MR. GARRETT: I appreciate it.

MR. SCHLAFLY Very good sir, - - measures - - concerned that's an area - - small businesses. - - the prime - - but what happened outside of that so you - - 15 days - -.

MR. GARRETT: Here's the killer, with this particular company, a big company –

MR. SCHLAFLY: [Interposing] Right.

MR. GARRETT: - defense contractor, they've got—we can't bill them for 30 days. And then its net 33, well we're paying our employees every two weeks so it's 63 days at least if the big company pays on time. So it's 63 days and as you can imagine having 13 to 15 employees you're paying every two weeks, that's a significant cash flow problem for us, a huge cash flow problem. So I'm at the mercy of this particular big company after they kind of - - they're trying to show us some mercy, they're allowing us to bill them every 15 days but it's still net 33 from there so we're still talking about a 48 day period that once we paid out the money - - for a small business that's a killer.

MR. SCHLAFLY: We appreciate your concern - - roundtable - - appreciate your comments about - - Patriot Express we have - - military veterans that serve their country - - around the world. - - Patriot Express is a guaranteed loan program by the SBA up to \$500,000 for - - 85% guarantee - - \$150,000, 75% guarantee up to \$500,00. It's a great - - I appreciate your concern. It is incumbent on a financial institution to have a safe and sound lending - - I appreciate your comments. We'll certainly follow these concerns you have here. Do you have prepared - -?

MR. GARRETT: Nope.

MR. SCHLAFLY: Okay, we'll have the transcript. Thank you.

MR. GARRETT: Thank you very much.

MALE VOICE: - -.

FEMALE VOICE: - -.

TOM: I'll be very general because I didn't really know any of this existed until James called me up last week and I went to a breakfast meeting with Congressman Kerry and you know, "Hi how are you, who are you?" And I just said a little something and they were kind of - - come to our - -. Our business has been around since 1919. We were fourth generation - -.

MR. SCHLAFLY: I missed your name sir.

TOM: I didn't, just Tom. And the reason I'm not giving you all of this is because when my Mark at my insurance company in town went to a meeting on, I think one of the OSHA guys were there and an ex-OSHA guy was there and he says, "Tom," he says, "Don't ever give your name." He said when—and my father - - small business and he says what the guy of OSHA look through the - - small business and hey we haven't seen that business for a while, let's go and inspect him. And he says, "Stay low, don't give your name and just run your business as best you can."

MR. SCHLAFLY: - -.

TOM: - - manufacturing - - business since 1919. I have 24 employees. I'm the president of the company. It's my father's - - been working with him for about 30 years now and - - in general, I have four kids and I really don't think I want to pass on the business because of nothing specific, I'm not a lawyer, I can't - - because every Sunday when it snows I go out and shovel the sidewalk - - someone slips I get sued. I've had OSHA in our building three times - - and it's always a book about this thick and don't you know that blah, blah, blah, blah. We had, for example right outside my office I went to Radio Shack and I got an extension cord and plugged in a time clock because we went from punch cards to a bigger time card. OSHA came and said that because it's outside my office it's a power strip that I bought for \$7.90. The extension cord which is temporary which is a \$7,000 fine. And I said well I'll just unplug it. They said no it's in the book - -.

So I had to get an attorney which is \$200 and something bucks an hour and they negotiated down and - - so \$7.00 power strip - - and I said you guys should not be - - I said if I'm telling you, you know we'll - - and I'm SOB than I expect a fight but if I said - - I didn't know, - - he said listen I come in as an officer of the law, I have a duty. When I see it I have to recognize it and our fines start out at here and they scared the hell out of me. And I came out of that okay and I mean I can go on and on. This year was kind of a tough year. I had a guy who lifted 20 pounds - - he lifted 20 pounds pulled something in his back and right away because it was work comp all of the attorneys sent paperwork to his home so he got an attorney and the first attorney dropped his case, he got a second attorney and he got a settlement. I had another guy that was reaching for a box, pulled something in his shoulder. Didn't get the box, - - two claims in my work comp - -. So I

went to my work comp agency and I says - - business almost 90 years and been with this company 35 can you - - I mean anybody could lift 20 pounds. I'm sure when they moved this table in here—all the liability, all the pressure, everything is on the business - - God maybe I got in the wrong business. My friends are - - graduated from local college here, my friends are police officers, retired, 48, firemen all live in my neighborhood and I'm jealous as heck and they can make a lot of mistakes. As a matter of fact a fireman that went to my kids' school was caught selling drugs well they just suspended him with pay and he's okay, still got his job. - - small business - - anything wrong OSHA, EPA, IRS, your own employees, there's attorneys in every city with this many lawyers that will screw you if you make a mistake.

And I think that our government as a whole, we started importing. I went over to Europe and I started importing stuff because I can mark it up and sell it but I feel guilty doing that because I like making—our family takes a lot of pride, my grandfather had a U.S. patent on a number of items. We make about 400 or 500 items, we actually make things here in this country. And I kind of wish my father was here - - went over to Europe, fought in World War II, and when we hit the sand as Americans, he went and built tanks, we built guns, we built rifles and we had pride in our country. And now we're going to be in a—who knows what happens—hopefully we're not in—we are in a war now, excuse me there's a lot of gentlemen giving their lives over there but everything comes from China, from - -. We don't make anything anymore because we don't really want to get our hands dirty. We're more of a service industry.

Knowing that when this gentleman says it's different when you sign your name on the line for a bank loan. I actually considered loaning from this bank but I went to a different local bank and I have a good relationship with them. I bought another business. Me and my wife we have 16 employees over there, and it's a retail outlet and we also catalog - -. And I've been working there for three years without a pay check. - - my wife's salary, she went from \$15,000 a year now she makes \$18,000. All of my employees make more than me and wife. But I think that I'd like to pay the bank loan off sometime but I think there's an opportunity that I can grow. But in both of these companies, it's not a McDonald's company. I have health insurance for the employees and their family, I have a pension plan, they have paid holiday, paid vacation which all costs a tremendous amount of money. And I'm the only one that works seven days a week because I don't want them to break up their family and them to go through that because I think there might be a silver lining. But our government's probably the biggest scare factor entity wise - - just sell the property and let all my employees go. And that's really sad, really sad. Yeah.

MR. SCHLAFLY: Please talk a little bit about process, how you - - paperwork - -.

TOM: Way too much. You know I just, it's eating me up inside. And a lot of it, you know when all the paperwork you get and I'm talking very generic if you don't do this its \$5,000 no usually \$10,000 fine and imprisonment and this, and this, and this and God it's like the Gestapo. And I know there's reason because there's people that probably know the system and cheat but you know there are honest hard-working people out there and it just seems like they try to scare the hell out of you. And you say okay fine you win, I'm scared, I quit. But right now if I quit I'm going to have all the employees gone by one company and - - government door and then they're going to vote for someone to give me, give me, give me. - - men and women and we work hard. And actually our business is fun but all the regulations, and I don't want to be specific - - but I'm just - - I'm not an attorney and I didn't know this meeting even existed until a couple of days ago. But I thought it's a chance to just to talk. - - someone can talk, I don't have to - - anymore time, go ahead.

OSHA REP: I work for the local OSHA office. My name is - -.

TOM: I remember reading - - paper from you 20-something years ago coming through.

OSHA REP: Comment about something or what you've been told - - been in business here - - inspections based on that information, it is totally false.

TOM: This person that told me that was at a meeting and he actually worked for your department.

OSHA REP: He's probably the one that got fired from our department. I suspect I know who it is - -

TOM: Well that's good to hear, I mean it scares the heck of - -.

OSHA REP: Unequivocally false. Our scheduling lists are set by surveys and we survey the employers - - employers - - that's all done in our national office. I just have a list of employers that have the highest rank from that list - - some employers - - inspection. On construction, it's the dollar amount of the bid - - which you're not in construction - -, that's how we do that. And we do not use any telephone books, we do not newspapers, we don't use the - - Business Bureau, we do not use any of that type of information to do our inspections. The only other way that you could be inspected is - - where you have a fatality or you have three or more people come to us and that's how we do it. I don't know if you're coming up on our - - scheduled inspection list - -. With respect to the time clock that is a particular - - must have been a violation of the National Electric Code - - regulation. We do issue fines for that but we'd be happy to have—I guess you came in - - conference with your attorney but we try to work with small business. We have a comprehensive - - program. If you don't have a history of violations in your small - - you can get 95% of

that penalty - - from the start, before we—and then we work further - - so I don't know exactly where you are or what the situation is but I think we have a very, very reasonable - - 95% - - reduction - - citation - - proposals.

MALE VOICE: - - voluntary compliance - - retaliation - - enforcement division - - voluntary - -.

OSHA REP: In our office and in very OSHA office we have a compliance assistance specialist that is dedicated to providing assistance - -. You can call our office, ask to speak, ask for; you don't have to ask for that compliance assistance specialist, you have to say I want information about how to comply with - - walking - - surfaces, guard rails - - and they will put you through. And that's a person who's dedicated to that. They don't do inspections, they're not, they don't give me feedback on who called, they don't even want to know who you are - - give that information. If you say I don't understand this or that about OSHA regulations. He will give you—he will provide that information. And if we can't get it locally, we'll go to the national office - -. We also have an extensive website.

TOM: I have - -.

OSHA REP: Look at that but we have lots of - - help you comply with our regulations - - regulations - - website and we get excellent comments about that. In fact, through the - - program OSHA has received some awards and recognition for that website as it became very helpful for - - understand your frustrations - - business. I'm happy to try to work with you - -.

TOM: Thank you that—I very much appreciate it.

OSHA REP: Okay.

MR. SCHLAFLY: - -?

TOM: Yes sir.

MALE VOICE: I'd like to make some comments. First I'd like to - - have the courage - -.

MR. SCHLAFLY: Thank you.

MALE VOICE: Secondly I retired a year ago, - - business, small business. One of the things I found - - would call me sometimes as much as six hours because - - they were having - - government as a friend. Most governments - - foe because they don't - - idea - - correct this - - or fear. But I will say one thing, what you're doing is what I'm trying - - situation - - I'm interested in what - - where I'm going. The - - still very important and particularly - - minority - - this state, the Hispanic community - -. Many Hispanics don't want to go into a federal agency because they know someone's whose undocumented. They fear they're going to be counted - - aiding and abetting an undocumented citizen. The consequence of this fear is so rapid - - for

governments to get together - - very good, get it together and say what should we do to resolve - - issues, race relations or - -.

MALE VOICE: - - comments and it's so true. Thank you again for being here. - - telling your government, it's bad, there's a problem. That's a challenge for us. We have these forums and have hearings and roundtables - - up front and we do work closely with the Inspector General, Federal Agents - - agents and I can tell you - - very serious so - - retaliate against my federal agency - - please let us know. - - office so I think you again for being here.

MALE VOICE: Thank you very much.

MALE VOICE: Thank you. - -.

FEMALE VOICE: Anybody else - - contact - -? I do have a - - .

MALE VOICE: - -.

[Noise]

MR. OWENS: Due to confidentiality - -. Okay, I would like to thank those federal agencies that chose to participate. I think that for those of us who are frustrated at every level, the fact that you took time from your busy day to come and - - business - - very gratifying. Sir I understand how you feel, aggrieved at every level, even though I'm a lawyer I'm barely - - some of my colleagues in some locations - - sometimes. We fired someone for walking out stealing a stapler - -. I know where you're coming from and I felt there is no industry more regulated at the federal - - level - - alcoholic beverages - - whether it's labeling, - - labels on our beer or people lifting things that are too heavy or idiotic building codes where two inspectors tell you - - explanation for fire exit sign - -. I hadn't been there four generations but - -.

MALE VOICE: - - else.

MR. OWENS: Also want to share with you my direct telephone number if any of you - - reach me, (202) 205-7360 and my direct email address, you have a document there - - Nicholas, N-I-C-H-O-L-A-S, dot Owens - - at SBA.com. So - - Nicholas dot, N-I-C-H-O-L-A-S, dot Owens, O-W-E-N-S, dot gov. Thank you all for being here.

AUTOMATED VOICE: Left.

[Crosstalk]

[END TAPE Omaha, NEHearing]